Nos. 21957, 22404

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

BEVERLY HILLS FEDERAL SAVINGS & LOAN ASSOCIATION,

Appellant,

vs.

EUGENE WEBB, JR., MARGUERITE R. WEBB, RICHARDS MATTHEWS, JR., ROBERT G. RUFI and EUGENE C. JONES,

Appellees.

BEVERLY HILLS FEDERAL SAVINGS & LOAN ASSOCIATION,

Appellant,

vs.

TITLE INSURANCE & TRUST COMPANY,

Appellee.

APPELLANT'S OPENING BRIEF.

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APPELLANT'S OPENING BRIEF.

Statement of Facts Showing Jurisdiction of the Appeal.

These are consolidated appeals from two judgments of the United States District Court. The judgments dismissed the action as to certain defendants on the ground that the District Court did not have jurisdiction of the subject matter of the claims stated against these de-

fendants in the plaintiff's second amended and supplemental complaint. The first judgment was entered on April 6, 1967. It dismissed the action as to the defendants Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones. [Webb C. T. 1414-a.][1] These defendants will sometimes hereinafter be referred to collectively as "Webb" or "the Webb group". The second judgment was entered on August 14, 1967. It dismissed the action as to the defendant Title Insurance and Trust Company. [TI C. T. 14.]

This Court has jurisdiction to review these judgments pursuant to 28 U.S.C.A. 1291, which authorizes the Courts of Appeals to review final decisions of the District Courts. At the time the judgments were made there were left pending certain other claims, including, among others, a claim of the plaintiff against the Federal Home Loan Bank Board, and cross-claims of the Federal Home Loan Bank Board against the Webb group.[2] The judgments in question were, however, final and appealable when made because the District Court in each judgment expressly determined that there was no just reason for delay, and directed the entry of final judgment, all pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. [Webb C. T. 1414-a; TI C. T. 14.]

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[1]In this brief we will refer to the Clerk's Transcript in Case No. 21957 as "Webb C. T.". We will refer to the Clerk's Transcript in Case No. 22404 as "TI C. T.".

[2]The claim of the plaintiff against the Federal Home Loan Bank Board has subsequently been dismissed. An appeal was taken from this judgment, which is pending. The District Court refused to dismiss the cross-claims of the Federal Home Loan Bank Board against the Webb group. The District Court certified its order for interlocutory appeal, but this Court refused to entertain that appeal.

Statutes Involved.

Appellant claims that the United States District Court has jurisdiction of the subject matter of the claims in question based on one or more of the following federal statutes:

1. **Jurisdiction of Actions Involving Controversies With Respect to Notices of Violation of Law Given by the Federal Home Loan Bank Board.**

12 *U.S.C.A.* 1464(d)(1):

". . . Upon the giving of notice of alleged violation of law or regulation as herein provided, either the Board or the association affected may, within thirty days after the service of said notice, apply to the United States district court for the district where the association is located for a declaratory judgment and an injunction or other relief with respect to such controversy, and said court shall have jurisdiction to adjudicate the same as in other cases and to enforce its orders. . . ."

2. **Jurisdiction of Actions Commenced by the Federal Home Loan Bank Board and of Cross Claims in Such Actions.**

28 *U.S.C.A.* 1345:

"Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress."

12 *U.S.C.A.* 1437(b):

"The Home Loan Bank Board which was, pursuant to Reorganization Plan Numbered 3 of 1947, established and made a constituent agency of the Housing and Home Finance Agency shall, from August 11, 1955, cease to be such constitutent agency and shall be an independent agency (including the Federal Savings and Loan Insurance Corporation) in the executive branch of the Government: . . . The name of the Home Loan Bank Board is changed to 'Federal Home Loan Bank Board'."

12 *U.S.C.A.* 1464(d)(1):

". . . The Board shall have power to sue and be sued, complain and defend in any court of competent jurisdiction in the United States or its territories or possessions or the Commonwealth of Puerto Rico. . . ."

Rule 13(g), *Federal Rules of Civil Procedure:*

"A pleading may state as a cross claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant."

Statement of the Case.

This action was commenced in March 1962 and is now more than six years old. It has been on appeal twice. The first appeal involved an attempt by a member of the Association to intervene in the action. The District Court denied the petition to intervene. (*Beverly Hills Federal Savings & Loan Association v. Federal Home Loan Bank Board* (D.C. S.D. Calif. 1962) 33 F.R.D. 292.) The District Court's refusal to permit intervention was affirmed by this Court. (*Reich v. Webb* (9th Cir. 1964) 336 F. 2d 153.) It was held that the Federal Home Loan Bank Board has the power to assert its cross-claims against Webb on behalf of the Association and that in doing so it is adequately representing the interests of the members of the Association in this action. The second appeal dealt with the validity of a settlement made between the Association, the Board and the Lytton defendants on January 14, 1965, and a dismissal of the Lytton defendants from the action. That appeal was taken by the Webb group and was dismissed because they had no appealable interest. (*Webb v. Beverly Hills Federal Savings & Loan Assn.* (9th Cir. 1966) 364 F. 2d 146.)

During the course of the last six years, numerous depositions have been taken. The case was nearing a pretrial conference when the court dismissed the action as between the Association and the Webb group. The following evidence developed through discovery will enable the court to better understand the nature of the case and the allegations contained in the Association's second amended and supplemental complaint.

Status of the Beverly Hills Federal Savings and Loan Association.

The Beverly Hills Federal Savings and Loan Association is a federally chartered savings and loan association. The members of the Association consist of its depositors and borrowers. Akin to the stockholders of a corporation, they are entitled to select the management of the Association through the election of directors. Proxies in favor of management are solicited from depositors when they open savings accounts and from borrowers as they obtain loans.

The Webbs Controlled the Association.

For many years prior to March, 1961, the Webb group controlled the Association. They were able to exercise control through the proxies solicited from members. The proxies held by the Webbs designated the following persons, in the order named, to vote at the annual meetings: Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Eugene Webb, III, and Robert G. Rufi. [Webb Depo. 54.][3]

These persons are all related to each other by blood or marriage. Marguerite R. Webb is the wife of Eugene Webb, Jr. Richards Matthews, Jr., is Eugene Webb, Jr.'s nephew. Eugene Webb, III, is the son of Eugene Webb, Jr., and Marguerite R. Webb. Robert G. Rufi is Marguerite R. Webb's brother. [Webb Depo. 52-54.]

By virtue of the proxies held by the Webbs, they were able to appoint the directors of the Association,

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[3]Depositions were taken of both Eugene Webb, Jr. and Marguerite R. Webb. In this brief we will refer only to the deposition of Eugene Webb, Jr.

who in turn appointed the officers. Eugene Webb, Jr., was a director, and also the president and chief executive managing officer. [Webb Depo. 53-54.] His wife, Marguerite R. Webb, was the chairman of the board of directors, and a vice president. [Webb Depo. 45-46.] The other three directors were: Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones. [Webb Depo. 45.] Jones was the only director not related to the Webbs.

Webb Ownership of Satellite Company.

Under laws formerly in effect, federal savings and loan associations were not permitted to engage in escrow, insurance and other related business.[4] But the management of an association can control the referral of this type of business. Many borrowers do not care who writes the fire insurance on their property, or who issues the title insurance. The association customarily designates the escrow holder of the loan escrow, and it also nominates the trustee under the deed of trust executed by the borrower. [Kull Depo. 74-81.]

In order to capitalize upon the profits to be derived from this kind of business, the Webbs owned and operated another company called the Southland Mortgage Company. [Webb Depo. 23-26.] This company conducted an escrow, insurance, title and loan service business. In 1949, the Webbs acquired all of the outstanding stock of Southland Mortgage Company. [Webb Depo. 26, 27.] The Association referred all of its own

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[4]Under a law passed in 1964, a federal savings and loan association is now authorized to invest up to one percent of its assets in a company engaging in a related business. (12 U.S.C.A. 1464(c), as amended by Public Law 88-560, 78 Stat. 804-806.)

insurance, title and escrow business to the Southland Mortgage Company and, within the limits of the law, the staff of the Association suggested to borrowers that they write the fire insurance on their homes through this company. [Webb Depo. 26, 27; Kull Depo. 74-78.]

In March 1958, the Webbs liquidated the Southland Mortgage Company and concurrently formed a new company called the Southland Company. [Webb. Depo. 38.] The existing business done by the old company, including pending escrows, was transferred to the new company. [Kull Depo. 54-55.] The Webbs contributed a total of $5,000 toward the formation of the new company. [Brittain Depo., Exs. 10, 14, 15, 16.] It was estimated that approximately 90 percent of the escrow and insurance business conducted by the Southland Company was referred to it by the Association. [Kull Depo. 74, 76, 78.] By March 1961, the Southland Company was earning a net profit of approximately $120,000 per year. [Webb Depo. 214.]

The Creation of the Webb Trust.

In May 1958, the Webbs created a trust for their two children. [Webb Depo. 39.] They named themselves and the Title Insurance and Trust Company as the trustees. [Webb Depo. Ex. 1.] The trust indenture provided that any two of the trustees could make decisions for the trust. After forming the trust, the Webbs transferred their stock in the Southland Company to the trust. [Webb Depo. 39.] At the time, the Southland Company was paying dividends of $12,000 per year upon an initial investment of $5,000. [Brittain Depo. 20, 57.]

Eugene Webb, Jr. Makes a Proposal to Thomas Clarke.

Webb had initially considered converting or merging the Association into a state association. [Webb Depo. 456, 462.] He contacted representatives of other savings and loan holding companies, but concluded there was no possibility of merger or conversion. [Webb Depo. 426; Clarke Depo. 21, 22.]

Early in 1961, at a savings and loan convention in Palm Springs, Webb told Thomas Clarke that he wanted to talk to him about the Association when they returned to Los Angeles. [Clarke Depo. 8-9.] Clarke was the general counsel and vice president of Lytton Financial Corporation. [Clarke Depo. 7.] Clarke considered any offer from Webb about the Beverly Hills Federal Savings and Loan Association as a "corporate opportunity" of the Lytton Financial Corporation. [Clarke Depo. 32.] Clarke reported the conversation to his superior, Bart Lytton. [Clarke Depo. 11-12.] Lytton urged Clarke to be certain to contact Webb when he returned to Los Angeles. [Clarke Depo. 13.]

Thomas Clarke Refers the Proposal to Bart Lytton.

Upon their return to Los Angeles, Webb and Clarke met in Webb's office at the Association. [Clarke Depo. 14-15.] Webb suggested that Clarke take over the presidency of the Association. [Clarke Depo. 15-17.] Webb explained the Southland Company operation to Clarke and told him that he wanted to make certain that its operations would not be affected by a change-over. [Webb Depo. 127.] He gave Clarke the financial statements for the Southland Company. [Clarke

Depo. 17; Webb Depo. 150.] A possible sale of the Southland Company to Clarke was discussed, but Clarke did not have the funds. [Clarke Depo. 27.]

The offer of the presidency of the Association did not appeal to Clarke. If he terminated his employment with the Lytton Financial Corporation, he would lose valuable stock options. [Clarke Depo. 24.] Clarke suggested to Webb that Bart Lytton be brought into the picture. [Webb Depo. 166.] Webb had no objection but advised Clarke that he must "control" him. [Clarke Depo. 23.]

Bart Lytton forthwith took over direct negotiations with Webb. They immediately discussed the operations of the Southalnd Company and the proxies held by Webb. [Webb Depo. 193, 212.] Their discussions eventually led to a proposition whereby the Lytton Financial Corporation would purchase the stock of the Southland Company and Clarke would take over the control of the Association. [Webb Depo. 206, 212, 216.] Lytton and Webb dickered like two school boys over the price. Clarke believed that Lytton offered Webb too much money. Before Webb could turn down an offer, Lytton "sweetened" it. [Clarke Depo. 47, 48.] Eventually Webb and Lytton reached an understanding whereby Lytton Financial Corporation would purchase the stock of the Southland Company for $1,500,000, give the Webbs a five-year personal service contract for an additional $300,000, and Clarke or Lytton would take over the management of the Association. [Clarke Depo. 48-52, 56-57; Webb Depo. 218-222.]

Clarke was requested to draft the necessary agreement in conjunction with Webb's lawyer. [Clarke

Depo. 52, 53.] Within a few days the agreement was drafted and approved. The agreement, dated March 9, 1961, took the form of these documents:

(1) A Buy and Sell Agreement between the Webbs, as trustees for their children, and the Lytton Financial Corporation. [Clarke Depo. Ex. B.] The Webbs agreed to sell all the outstanding stock of the Southland Company to the Lytton Financial Corporation for $1,500,000. Among other provisions, the Agreement provided:

"The Sellers further acknowledge that the principal source of income and major customer of the Southland Company is the . . . Association, and that the Sellers will do any and all things necessary, and execute any and all necessary documents or agreements, as may be required by the Buyer in order to assure the continuance of the present business relationship between the Southland Company and the . . . Association."

(2) The Webbs assigned their proxies from the members of the Association by substituting nominees of the Lytton Financial Corporation as the proxy holder "for a good and valuable consideration". [Clarke Depo. Ex. A.]

(3) A Personal Service Agreement between the Webbs and the Lytton Financial Corporation whereby the Webbs would receive $60,000 a year for five years as "independent contractor consultants". [Clarke Depo. Ex. C.]

On March 14, 1961, Webb called a meeting of the board of directors of the Association for the morning and a meeting of the Southland Company for the

afternoon of the same day. The meetings had all been pre-arranged by Webb. Prior to the meetings, Webb had advised the other directors that he was going to sell the Southland Company, and resign as president of the Association and be replaced by Thomas Clarke. [Webb Depo. 66-71.]

At the board meeting, all the directors executed and delivered their resignations to Webb. The directors who were proxy holders signed the proxy substitution agreement in favor of the nominees of the Lytton Financial Corporation. [Clarke Depo. Ex. A; Webb Depo. 74-76.] The meeting was adjourned to be reconvened in the afternoon at the Title Insurance and Trust Company in Los Angeles.

During the afternoon two different meetings were held, although there was no interval between the two. One was a meeting of the directors of the Southland Company and the other was the continuation of the adjourned meeting of the directors of the Association. [Kull Depo. Exhs. 1 and 2; Webb Depo. 82-88.] Representatives of the Lytton Financial Corporation were present for these meetings. During the meeting of the Southland Company, the sale of the stock to the Lytton Financial Corporation was consummated for $1,500,000. [Webb Depo. 84, 85]. During the continuation of the adjourned meeting of the Association's board of directors, the Webb groups' resignations as directors, which had been executed at the morning meeting, were accepted. [Webb Depo. 83.] Nominees of the Lytton Financial Corporation were selected as directors to take their place. [Webb Depo. 88.] At Bart Lytton's request, after the meeting the employees of the Association and the Southland Company were notified that there would be no changes in policy. [Webb Depo. 290-299.]

The Federal Home Loan Bank Board eventually learned of the transaction and took steps to rectify it.

Notice of Violation.

On January 26, 1962, the Federal Home Loan Bank Board (hereinafter "the Board") gave notice of alleged violations of law arising out of the transaction. This notice charged, among other things: (1) that the proxy sale was an illegal transaction; (2) that the Webb group had obtained a secret profit by selling their proxies to the Lytton group; and (3) that the election of the Lytton group was not proper. The Board's notice of January 26, 1962, is attached to various of the pleadings in the Clerk's Transcript. [See, *e.g.,* Webb C. T. 8-14.] For convenience, a copy thereof is reproduced as Appendix "A" to this brief. When the violations were not corrected, the Board adopted a second resolution alleging the same charges. [Webb C. T. 75.]

The Pleadings.

On February 20, 1962, the Association filed this suit, seeking a declaratory judgment with respect to the Board's notice of violations of law. [Webb C. T. 82.] On April 23, 1962, the Association filed a first amended complaint. [Webb C. T. 82.] This pleading added the Webbs and Lyttons as parties defendant. As the Association was then controlled by Lytton, the Association's position at that time was that the transactions complained of did not constitute violations of law. [Webb C. T. 4, lines 3-7; 85, lines 6-21.]

In its answer, filed July 2, 1962, the Board alleged, as it had in its notice of violation: (1) that the sale of proxies was an illegal transaction; (2) that Webb had realized secret profits; and (3) that Lytton had been improperly elected. The Board asserted cross-claims

against Webb and Lytton, and sought judgment: (1) removing Lytton from management; (2) ordering the election of an independent board of directors of the Association; and (3) requiring the Webbs to restore to the Association the consideration they had received for the sale of proxies. [Webb C. T. 188-217.]

The pleadings remained in this status until 1965. In January of 1965, Lytton agreed to relinquish management of the Association, and an independent board of directors was elected.[5] Thereafter the Lytton group was dismissed from the action. The Webb group appealed from the dismissal, but their appeal was dismissed on the ground that they had no appealable interest. (*Webb v. Beverly Hills Federal Savings & Loan Assn.* (9th Cir. 1966) 364 F. 2d 146.) The Association was then for the first time controlled by an independent board of directors. On May 10, 1965, the Association filed a second amended and supplemental complaint. This is the pleading which the District Court dismissed for lack of jurisdiction, and which is the subject of this appeal.

The second amended and supplemental complaint alleges, in pertinent part, as follows: (1) the facts constituting the Webb-Lytton transaction [Webb C. T. 753]; (2) the Board's notice of violation made on January 26, 1962 [Webb C. T. 755]; (3) the correction of

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[5]The Board, the Association and Lytton entered into a stipulation for settlement on January 14, 1965. The terms of the settlement were that: the proxies of the members of the Association, which Lytton had purchased from Webb, were transferred to the Board; Lytton agreed to sell the stock in Southland Company (the satellite) to the Association; and Lytton resigned from management of the Association and Southland Company. [Webb C. T. 615.] In 1964 the law had been amended to permit savings and loan associations to invest in satellite companies. (12 U.S.C.A. 1464(c), as amended by Public Law 88-560, 78 Stat. 804-806.)

the violation with respect to Lytton management by way of election of an independent board of directors [Webb C. T. 756]; and (4) the existence of a controversy between the parties with respect to the remaining matters charged as violations in the Board's notice of January 26, 1962. [Webb C. T. 757.][6]

The controversy remaining as between the Association and the Webb group is that the Association (now controlled by an independent board of directors) seeks judgment in the amount of the consideration Webb received from Lytton which constitutes a profit from the sale of proxies. [Webb C. T. 758.] This is essentially the same claim asserted by the Board in behalf of the Association in the Board's cross-claims against the Webb group.

The remaining controversy between the Board and the Association is not specified in the first amended complaint, but was determined in subsequent proceedings to involve two points: (1) The Board contends that the Webbs are additionally liable to the Association for punitive damages, and (2) the Board contends that the Association is precluded from rehiring anyone from the Webb group. [Webb C. T. 1413-1414.]

On August 30, 1965, Webb moved to dismiss the second amended and supplemental complaint on the grounds: (1) that the District Court does not have jurisdiction; (2) that no claim was stated; and (3) that the action was barred by the statute of limitations. [Webb C. T. 925.] This motion was overruled by a

[6]Title Insurance & Trust Company was also added as a defendant for the purpose of facilitating the enforcement of any orders made by the court with respect to the shares of the satellite company which were held in trust. [Webb C. T. 756.]

Memorandum Opinion filed January 19, 1966. [Webb C. T. 1053.] With respect to jurisdiction, the District Court held that it had jurisdiction when the action was first filed under 12 U.S.C.A. 1464(d)(1) because of the controversy between the Board and the Association, and that it did not lose jurisdiction by the subsequent compromise with Lytton in 1965. [Webb C. T. 1055-1056.]

Thereafter Webb moved to certify this order for interlocutory appeal. [Webb C. T. 1060.] At the hearing of this motion the court indicated that it would reconsider the motion to dismiss and ordered the parties to file additional briefs on the question of jurisdiction. The question was extensively briefed again [Webb C. T. 1092-1288]; and on September 30, 1966, the court ordered the parties to file affidavits to show the specific matters remaining in controversy between the Association and the Board. [Webb C. T. 1286.] Thereafter the parties filed affidavits and further briefs. [Webb C. T. 1291-1313, 1368-1408.] The affidavits showed that the remaining controversy between the Board and the Association was that the Board and the Association were not agreed as to whether the Webb group was liable for punitive damages or whether the Association should be precluded from rehiring anyone from the Webb group.

On April 6, 1967, the District Court reversed its prior ruling and dismissed the action as to the Webb group for lack of jurisdiction. The court held that the only basis of jurisdiction was 12 U.S.C.A. 1464(d)(1),

which provides that either the Board or an association may bring suit in the District Court when the Board has given notice of violation of law; that such suits are limited to controversies between the Board and the association; and that the controversies remaining between the Board and the Association in this case, namely, Webb's liability for punitive damages and rehiring of Webb, are not sufficient controversies to constitute a basis for federal jurisdiction. [Webb C. T. 1413-1414.] The action was subsequently dismissed as to Title Insurance & Trust Company on the same ground. [TI C. T. 14-15.]

As noted earlier in the jurisdictional statement in this brief, the remaining claims of the Association against the Board were subsequently dismissed by the Court. An appeal has been taken from this judgment which is pending. By cross-claims the Board also asserts against Webb essentially the same claim made by the Association against Webb in its second amended and supplemental complaint. [Webb C. T. 199-207.] The District Court has subsequently refused to dismiss these cross-claims. The order was certified for interlocutory appeal, but this Court refused to entertain that appeal.

Summary of Argument.

1. 12 U.S.C.A. 1464(d)(1) is not limited to controversies between the Board and an association. The statute provides that when the Board gives notice of violation, either the Board or the association may apply to the District Court "for a declaratory judgment and

an injunction or other relief with respect to such controversy". The words "such controversy" refer to the Board's notice of violation and not to some other collateral controversy which may or may not exist between the Board and the association depending on who happens to control the association at the time. The controversy set forth in the Board's notice of violation in this case was not in reality any controversy between the Board and the Association. The notice charged that Webb had obtained a secret profit which belonged to the Association and that Lytton had been improperly elected pursuant to the illegal proxy sale. These are matters of controversy between the Board and the Association on the one hand, and Webb and Lytton on the other. The remedy provided by the statute would be useless if limited to merely adjudicating whether the Association should agree with the Board's position with respect to the controversy.

2. If jurisdiction over the Association's claim against Webb cannot be based on 12 U.S.C.A. 1464(d)(1), there is nevertheless jurisdiction of the Board's assertion of this claim under either 12 U.S.C.A 1464(d)(1) or 28 U.S.C.A. 1345. This Court held in *Reich v. Webb* (9 Cir. 1964), 336 F. 2d 153, that the Board has the power to assert the claim against Webb under 12 U.S.C.A. 1464(d)(1). There is also jurisdiction of the Board's claim against Webb under 28 U.S.C.A. 1345. Section 1345 confers jurisdiction of all suits commenced by the United States or its agencies,

and the Board is a United States agency. The Board's claim against Webb was asserted against both the Association (in the Board's answer) and against Webb (in its cross-claim). Under Rule 13 of the Federal Rules of Civil Procedure, the Association is entitled to assert its claim against Webb as a cross-claim. The District Court has ancillary jurisdiction to entertain the Association's claim since it arises out of the same transaction or occurrence as the Board's claim. An independent basis of jurisdiction is not needed to support a transaction-related cross-claim. There can be no question but that these claims arise out of the same transaction or occurrence. The Board's and the Association's claims against Webb are practically identical.

ARGUMENT.

I.

The District Court Has Jurisdiction of the Association's Claim Against Webb Under 12 U.S.C.A. 1464(d)(1).

12 U.S.C.A. 1464(d)(1) expressly confers federal jurisdiction to adjudicate controversies raised by the Board upon giving a notice of violation of law. The statute provides, in pertinent part, as follows:

> "Upon the giving of notice of alleged violation of law or regulation as herein provided, either the Board or the association affected may, within thirty days after the service of said notice, apply to the United States district court for the district where the association is located for a declaratory judgment and an injunction or other relief with respect to such controversy, and said court shall have jurisdiction to adjudicate the same as in other cases and to enforce its orders."

The notice of violation which the Board is authorized to give, and which the federal courts may adjudicate, is not limited to enforcement of the provisions of 12 U.S.C.A. 1464 or of the Board's rules and regulations made thereunder. The scope of the Board's authority is defined in 12 U.S.C.A. 1464(d)(1) as follows:

> "The Board shall have power to enforce this section and rules and regulations made hereunder. In the enforcement of any provision of this section or rules and regulations made hereunder, *or any other law or regulation*, and in the administration of conservatorships and receiverships as provided in

paragraph (2) of this subsection, the Board is authorized to act in its own name and through its own attorneys." (Emphasis added.)

In *Reich v. Webb* (9th Cir. 1964), 336 F. 2d 153, 156-158, it was contended by Reich, who was there attempting to intervene in this action, that under the doctrine of *ejusdem generis,* the Board's authority was limited to enforcement of §1464 and its rules and regulations made thereunder. Reich claimed that the Board's notice of violation in this case does not involve enforcement of such law or rules and regulations, but only an attempt to enforce the common law liability of directors for breach of their fiduciary duties. This Court held, however, that the scope of the Board's authority is not so limited. The statute expressly provides for enforcement of *"any other law or regulation"*. The Board has authority under 12 U.S.C.A. 1464(d)-(1) to enforce the liability of the Webb group to account for the secret profits realized from the proxy sale and to give the notice of that violation of law which is the subject of this lawsuit.

This controversy which the Board is authorized to raise is not in reality any controversy between the Board and the Association. The Board has never claimed, and certainly its notice of violation does not claim, that the Association has any liability to the Board or anyone else. The only claim, and hence the only controversy, is whether or not the Webb group must account to the Association for the secret profit realized. The fact that the Association once disagreed with the Board and now aligns with the Board's position, at least in part, is immaterial. The statute does not authorize the Association to give notice of violations of

law. Only the Board may do so. The Board's notice necessarily defines the controversy, and whatever position the Association may or may not take is immaterial. It is possible, of course, that the Association may create some additional or collateral controversy by disagreeing with the Board, as was the case here until 1965, and is still the case to some extent. But that cannot change the basic controversy which the Board establishes by giving its statutory notice of violation.

Once the notice of violation is given, either the Association or the Board may seek judicial review and enforcement. Either the Association or the Board may apply "for a declaratory judgment and an injunction or other relief with respect to such controversy." (12 U.S.C.A. 1464(d)(1).) In most cases, and certainly in this one, the grant of jurisdiction would mean very little, if limited to determining only the collateral controversy which might exist by way of a difference of opinion between the Board and the Association. Such a limited construction of the statute would leave undetermined the real controversy raised by the Board's notice of violation. 12 U.S.C.A. 1464(d)(1) should not be so limited. It expressly provides for judicial review and enforcement of the Board's notice of violation. In this case the Board was authorized to give the notice of the violation of law by the Webb group, and the Board is authorized to sue to enforce Webb's liability to the Association. (*Reich v. Webb* (9th Cir. 1964), 336 F. 2d 153.) Both the Association and the Board are authorized to apply to the United States District Court "for a declaratory judgment and an injunction or other relief with respect to such controversy." (12 U.S.C.A. 1464(d)(1).) The statute ex-

pressly confers federal subject matter jurisdiction to adjudicate this controversy.

Stated another way, the question amounts to this. By virtue of 12 U.S.C.A. 1464(d)(1) the District Court has jurisdiction of the controversy raised by the Board's notice of violation, and either the Board or the Association may commence the suit. Who do the Board or the Association sue in invoking the court's jurisdiction? Are they limited to suing each other, thereby leaving the ligitation undetermined as to the individual officers and directors who are the real objects of the controversy? The statute does not contain any such limitation, and there is no sound basis for reading such a limitation into the statute. To do so would lead to an absurd result. The real parties in interest in respect of the controversy in this case are the Webb group. It would accomplish nothing to determine only what position the Association should take with respect to the Board's notice of Webb's violation. The objective of the statute can only be achieved by bringing before the court the real parties in interest and adjudicating their rights and liabilities.

In a sense, 12 U.S.C.A. 1464(d)(1) is similar to 28 U.S.C.A. 1345 which confers jurisdiction of suits commenced by the United States and its agencies. 28 U.S.C.A. 1345 does not say who the United States can sue. The only reasonable interpretation is that the United States can sue anyone against whom it has a claim and over whom it can obtain personal jurisdiction. 12 U.S.C.A. 1461(d)(1) is different only in that it is restricted to a particular type of case, namely, controversies raised by the Board's notices of violation of law. This is not a restriction of the type of

person who can be sued. Insofar as parties are concerned, 12 U.S.C.A. 1464(d)(1) is no different than 28 U.S.C.A. 1345. Neither statute specifies who may be named as a defendant. The only logical inference to be drawn is that the defendants shall be the persons against whom a claim can be stated. In this case the Webb group are such persons. The Board's notice alleges that the Webbs are liable to the Association for the money received from the sale of proxies. 12 U.S.C.A. 1464(d)(1) permits either the Board or the Association to sue to adjudicate and enforce that claim.

II.

The District Court Has Jurisdiction of the Board's Claim Against Webb Under Either 12 U.S.C.A. 1464(d)(1) or Under 28 U.S.C.A. 1345; There Is Ancillary Jurisdiction of the Association's Claim Against Webb as a Cross-Claim.

The question of whether the District Court has jurisdiction to entertain the Board's claim against Webb under 12 U.S.C.A. 1464(d)(1) is no longer open because of the decision in *Reich v. Webb* (9th Cir. 1964) 336 F. 2d 153. When an issue in a case is finally decided on appeal, that determination becomes the "law of the case" and will not be re-examined on a subsequent appeal. (*General American Life Ins. Co. v. Anderson* (6th Cir. 1946) 156 F. 2d 615, 618; *Atlas Scraper & Engineering Co. v. Pursche* (9th Cir. 1966) 357 F. 2d 296, 297; *White v. Murtha* (5th Cir. 1967) 377 F. 2d 428, 431.)

Shortly after this action was filed, Reich sought to file a complaint in intervention as a member of the Association. Reich's complaint set forth the same claim against Webb that the Board asserted against the As-

sociation (by its answer) and against Webb (by its cross-claims). That claim (which the Association also now asserts in its second amended and supplemental complaint) is that the Webb group personally profited by selling the proxies to Lytton and are liabile to account to the Association for the consideration received because the proxies and the consideration received therefor are assets rightfully belonging to the Association and its members [Webb C. T. 98.] Reich's petition for intervention was denied and affirmed on appeal. In affirming the denial of Reich's petition, this Court said that the narrow question presented was "whether the District Court properly refused appellant's [Reich's] motion to intervene", but that the answer to this question depends upon "whether the Home Loan Bank Board has the power to enforce by court action common law fiduciary responsibilities of savings and loan association officers and directors." (*Reich v. Webb* (9th Cir. 1964) 336 F. 2d 153, 155.)

It was concluded that the Board does have such power and that it is adequately representing the interests of Reich in this case. Hence, Reich was not entitled to intervene as a matter of right. The decision in *Reich v. Webb* necessarily holds that the District Court has jurisdiction of the Board's claim against Webb. At that time only the Board was asserting the Webb claim. If there was no jurisdiction to entertain the Board's claim Reich would have to have been permitted to intervene because he was the only other person then seeking to make this claim. But it was held that the Board is properly seeking to enforce the claim against Webb. 336 F. 2d at 156:

> ". . . we conclude that the Bank Board has power by virtue of 12 U. S. C. §1464(d)(1) to secure all

> relief sought by appellants, and therefore they are 'adequately represented' so as to preclude intervention as a matter of right under Rule 24(a), F. R. Civ. P."

If the question is to be re-examined, and if jurisdiction cannot be predicated on 12 U.S.C.A. 1464 (d)(1) on the theory that this statute permits the Board and the Association only to sue each other, jurisdiction can be based on 28 U.S.C.A. 1345. 28 U.S.C.A. 1345 confers jurisdiction of all "actions, suits or proceedings commenced by the United States, or any agency or officer thereof expressly authorized to sue by Act of Congress." This statute bases subject matter jurisdiction on the status of the plaintiff, as distinguished from the nature of the claim itself. For example, in *Acron Investments, Inc. v. Federal Savings & Loan Ins. Corp.* (9th Cir. 1966) 363 F. 2d 236, the Federal Savings & Loan Insurance Corporation brought suit to foreclose deeds of trust. The trust deeds had been owned initially by a savings and loan association, and prior to suit had been assigned to the Federal Savings & Loan Insurance Corporation. The savings and loan association could not have sued in the federal court to enforce these obligations. There was no federal question involved, and there was no diversity of citizenship between the savings and loan association and the persons who executed the trust deeds. However, when the trust deeds were assigned to the Federal Savings & Loan Insurance Corporation, suit to foreclose them could be brought in the federal court because of the status of the Federal Savings & Loan Insurance Corporation as an agency of the United States. The status of the Federal Home Loan Bank

Board is the same. It is expressly declared by Act of Congress to be an agency of the United States. (12 U.S.C.A. 1437(b).) It is also expressly authorized to sue by Act of Congress. (12 U.S.C.A. 1464(d)(1).)

Thus, if it is assumed that the Association could not sue Webb in the first instance because 12 U.S.C.A. 1464(d)(1) only authorizes the Association to sue the Board, the same limitation would not apply to the Board. The Board, being an agency of the United States, can assert any claim it has against anyone pursuant to 28 U.S.C.A. 1345. When the Board filed its answer and cross-claim, it did assert this identical claim against the Association (by its answer) and against the Webbs (by its cross-claims). If the Association had not commenced the lawsuit, and if instead the Board had sued the Association and the Webbs and asserted the claim in a complaint, there would be no question but that there would be jurisdiction under 28 U.S.C.A. 1345.

Should it make any difference that the Board did not sue first? To make such a distinction would be to sacrifice substance for form. The substance of the situation is that when the Board filed its answer and cross-claims, it invoked the court's jurisdiction under 28 U.S.C.A. 1345 just as if it had filed a complaint naming the Association and the Webb group as defendants. The difference is only in the form of the pleadings that were filed.

If any distinction were to be made based on the form of the pleadings filed, it would have to depend on a limitation of the court's jurisdiction under 28 U.S.C.A. 1345 to complaints filed by the United States and its agencies, as distinguished from claims asserted

in other pleadings. But section 1345 contains no such limitation. It does not confer jurisdiction only in cases where the United States files a complaint. There is jurisdiction under 28 U.S.C.A. 1345 of "all civil actions, suits or proceedings commenced by the United States". This language is even broader than that used in other jurisdictional statutes. For example, in 28 U.S.C.A. 1332, which provides for diversity cases, only the words "civil actions" are used. When a complaint is dismissed, ordinarily any counterclaims are also dismissed unless there is an independent basis of jurisdiction for the counterclaims. If there is diversity of citizenship the counterclaim remains as if it had been originally asserted in a complaint. (*Pioche Mines Consolidated, Inc. v. Fidelity-Philadelphia Trust Co.* (9th Cir. 1953) 206 F. 2d 336.) Thus, the words "civil actions" as used in 28 U.S.C.A. 1332, are not construed to mean only the filing of a complaint. "Civil actions" means the assertion of a cause of action in any other type of pleading. 28 U.S.C.A. 1345 should be given the same construction, as its language is even broader. Section 1345 confers jurisdiction, not only of "civil actions", but also of "suits and proceedings" commenced by the United States and its agencies. The Bank Board's assertion of its cross-claim against Webb is a civil action, suit or proceeding commenced by an agency of the United States. We submit that the District Court has jurisdiction of the Board's claim either under 12 U.S.C.A. 1464(d)(1), as decided in *Reich v. Webb* (9th Cir. 1964) 336 F. 2d 153, or under 28 U.S.C.A. 1345 because the Board is an agency of the United States.

Once it is determined that there is jurisdiction of the Board's claim against Webb, it necessarily follows that

there is ancillary jurisdiction to entertain the Association's essentially identical claim asserted in its second amended and supplemental complaint. The Association's claim against Webb is, in effect, a cross-claim. Rule 13(g) of the *Federal Rules of Civil Procedure* provides that a "pleading may state as a cross-claim any claim against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action." There is no question that the Association's claim is related to the same occurrence or transaction. It is essentially the same claim asserted by the Board. It is not necessary to have an independent basis of jurisdiction for a transaction-related cross-claim, as the court then has ancillary jurisdiction. (*Scott v. Fancher* (5th Cir. 1966) 369 F. 2d 842, 844.)

It is also immaterial that the Board's answer and cross-claims were not designated as a "complaint", and that the second amended and supplemental complaint is not labelled a "cross-claim". Rule 8(f) of the *Federal Rules of Civil Procedure* provides that all "pleadings shall be so construed as to do substantial justice." It has been held that the status of a pleading is not determined by its title, but according to its substance. In *Rubenstein v. United States* (10th Cir. 1955) 227 F. 2d 638, 642, the court treated a motion under 28 U.S.C.A. 2255 as a motion for new trial, and said: "There is no controlling magic in the title, name, or description which a party litigant gives to his pleading. The substance rather than the name or denomination given to a pleading is the yardstick for determining its character and sufficiency." In *Falciani v. Philadelphia*

Transportation Co. (D.C.E.D. Pa. 1960) 189 F. Supp. 203, 204, a defendant entitled his pleading a "counterclaim", whereas it should have been a cross-claim. The court said: "We think it clear that the P.T.C. may assert a claim against Battiliano for damage to the P.T.C. bus. Whether this claim is called a 'counterclaim' or a 'cross-claim' is of no significance. Therefore, we shall allow the claim to stand." In *Baker v. Sisk* (D.C. E.D. Okla. 1938) 1 F.R.D. 232, 236, the question was whether a motion to dismiss could be treated as an answer. The court held:

> "This is to be determined not by the designation given it by the defendants but by the contents of the pleading. The name given to a pleading does not change the nature of the pleading. And, although the defendants have designated the pleading a motion to dismiss, it is, we think, in fact an answer and will be treated as such."

Conclusion.

The District Court has jurisdiction of the Association's claims asserted against the Webb group and Title Insurance and Trust Company in the second amended and supplemental complaint on either of the following grounds:

1. 12 U.S.C.A. 1464(d)(1) authorizes the Association to sue in the Federal Court for an adjudication with respect to the controversy raised by the Board's notice of violation of law. In such cases the District Court is expressly granted jurisdiction to adjudicate the controversy as in other cases and to enforce its order. The statute does not limit the Association to suing the Board alone, and the jurisdictional grant would be mean-

ingless if so construed. The real parties in interest are the Webb group. It is their rights and liabilities, and not the Association's, that are brought in question by the Board's notice of violation. 12 U.S.C.A. 1464-(d)(1) confers jurisdiction to adjudicate this controversy.

2. If jurisdiction of the Association's claims against Webb is not found in 12 U.S.C.A. 1464(d)(1), there is nevertheless, ancillary jurisdiction to entertain the Association's claim. The District Court has jurisdiction of the Board's claim against Webb under either 12 U.S.C.A. 1464(d)(1) or 28 U.S.C.A. 1345. The Association's claim is essentially the same as it arises out of the same transaction. It is, in effect, a transaction-related cross-claim under Rule 13 of the Federal Rules of Civil Procedure. In such cases no independent basis of jurisdiction is needed to support the claim.

Respectfully submitted,

BALL, HUNT, HART AND BROWN,
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CLARK HEGGENESS,
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Attorneys for Appellants.

Certificate.

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19, and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

JOSEPH D. MULLENDER, JR.

APPENDIX "A."

FEDERAL HOME LOAN BANK BOARD

No. 15,430

Date: January 26, 1962

WHEREAS, Beverly Hills Federal Savings and Loan Association, Beverly Hills, California, Lytton Savings and Loan Association, Hollywood, California and Home Foundation Savings and Loan Association of Palo Alto, Palo Alto, California are institutions whose accounts are insured under Title IV of the National Housing Act, as amended, 12 U.S.C. § 1724 *et seq.*, and WHEREAS, Beverly Hills Federal Savings and Loan Association, Beverly Hills, California is a Federal Savings & Loan Association, chartered by the Federal Home Loan Bank Board under the provisions of Section 5(a) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. § 1464(a) and subject to the Rules and Regulations of the Federal Home Loan Bank Board, and

WHEREAS, prior to and since the 9th day of March, 1961, Lytton Savings and Loan Association, Hollywood, California and Home Foundation Savings and Loan Association of Palo Alto, California are and have been owned and controlled by the Lytton Financial Corporation, a corporation organized under the laws of the State of Delaware, with its principal office in Hollywood, California, and

WHEREAS, prior to, and for some time on, the 14th day of March, 1961, the Beverly Hills Federal Savings and Loan Association, Beverly Hills, California, had a five-member Board of Directors, of which Board of Directors, Eugene Webb, Jr. was President and a Di-

rector and Marguerite R. Webb was First Vice-President and Chairman of the Board of Directors, respectively, and Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones were the remaining members of said Board of Directors, and

WHEREAS, on or about the 9th day of March, 1961, Lytton Financial Corporation, acting by and through Thomas W. Clarke, its Senior Vice-President (and Attorney), entered into a "Buy and Sell Agreement" to purchase all of the outstanding capital stock of the Southland Company, a mortgage banking, escrow and insurance company from a trust or trusts controlled by Eugene Webb, Jr. and Marguerite R. Webb (with the third and corporate trustee being the Title Insurance and Trust Company, 433 South Spring Street, Los Angeles, California), for the benefit of their children, and in which "Buy and Sell Agreement" the consideration payable by the Buyer was $1,500,000 in cash to the Trust and a Personal Service Agreement described hereinafter of Eugene Webb, Jr. and Marguerite R. Webb with a further consideration to them of $300,000, payable in annual installments of $60,000, and

WHEREAS, a pertinent paragraph of the aforesaid "Buy and Sell Agreement" of March 9, 1961 provided that Eugene Webb, Jr. and Marguerite R. Webb would do any and all things necessary and execute any and all necessary documents as Lytton Financial Corporation might require to assure the continuance of the present business relationship between the Southland Company and the Beverly Hills Federal Savings and Loan Association, and

WHEREAS, all warranties made by the "Sellers" in the aforesaid "Buy and Sell Agreement" were the war-

ranties of Eugene Webb, Jr. and Marguerite R. Webb and the corporate trustee neither joined in these warranties nor executed the agreement as co-trustee of this trust for the benefit of the Webb children, and

WHEREAS, as a follow-up agreement to the "Buy and Sell Agreement" of March 9, 1961, a "Personal Service Agreement" was entered into on March 14, 1961 between Lytton Financial Corporation and Eugene Webb, Jr. and Marguerite R. Webb whereby Lytton Financial Corporation, identified in the "Personal Service Agreement" as the "Buyer", agreed to pay the sum of $300,000 over a 5-year period to Eugene Webb, Jr. and Marguerite R. Webb, irrespective of whether either or both of said parties survive the period of the Agreement and are, in fact, able and do perform the services, and

WHEREAS, on or about the 14th day of March, 1961, a regular meeting of the Board of Directors of the Beverly Hills Federal Savings and Loan Association was held in the morning in the offices of the Association, which meeting was adjourned at 10:00 a.m. and reconvened for a further session at 1:30 p.m. at the offices of the Title Insurance and Trust Company, 433 South Spring Street, Los Angeles, California, and

WHEREAS, Bart Lytton, President, Chairman of the Board and a Director of Lytton Financial Corporation, Thomas W. Clarke, Vice-President, a Director and Counsel for Lytton Financial Corporation, Maurie Starrels, Secretary, Treasurer and a Director of Lytton Financial Corporation and Samuel J. Sills, a Director of Lytton Savings and Loan Association, were present at this regular meeting of the Board of Directors of Beverly Hills Federal Savings and Loan Association, and

WHEREAS, Richards Matthews, Jr. was not present at the reconvened meeting of the Board of Directors of Beverly Hills Federal Savings and Loan Association at 1:30 p.m. on March 14, 1961, and

WHEREAS, at said reconvened regular meeting of the Board of Directors the resignations of the five Board members were accepted at successive intervals during the meeting and four of the five resigning members of the Board of Directors proceeded to elect Beth Lytton as Chairman of the Board and a Director, Thomas W. Clarke as President, Managing Officer and Director and Samuel J. Sills as a Director,—two of these resigning directors who participated in the election being Eugene Webb. Jr. and Marguerite R. Webb, interested parties to this entire transaction which would redound to their benefit and to the benefit of a trust or trusts in which their children were the beneficiaries, and

WHEREAS, at said reconvened regular meeting, Glenn Wilson, a Director of Lytton Financial Corporation, was elected Vice-President of the Association, and

WHEREAS, on or about this same date, the 14th day of March, 1961, as part of the consideration to Lytton Financial Corporation for the purchase of the Southland Company, the power of substitution, contained in all proxies of members of Beverly Hills Federal Savings and Loan Association, constituting and appointing Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews. Jr., Eugene Webb, III, and Robert G. Rufi, in the order named, proxy for and in the name, place and stead of the signing member, was, "for good and valuable consideration," exercised by substituting Bart Lytton, Beth Lytton, Samuel J. Sills and Thomas W.

Clarke for the individuals previously named, in the order named, and

WHEREAS, shortly after the change in directorate of Beverly Hills Federal Savings and Loan Association, Beverly Hills Federal purchased approximately 15.2 million dollars worth of loans, at a 3.4% premium, from Lytton Savings and Loan Association and simultaneously sold at par, approximately 15.8 million dollars worth of loans to Lytton Savings and Loan Association, which, it appears, were reversed by action of the Board of Directors of Beverly Hills Federal Savings and Loan Association on June 28, 1961 and by action of the Board of Directors of Lytton Savings and Loan Association on June 21, 1961, and

WHEREAS, after being advised by the Federal Home Loan Bank Board on June 15, 1961 of certain possible violations of law and regulations and serious questions, which were outlined in detail with respect thereto, the then purported Directors of Beverly Hills Federal Savings and Loan Association, Beth Lytton, Dr. Samuel J. Sills and Thomas W. Clarke met, its President, Thomas W. Clarke informing the Board of Directors that he had received this letter, addressed to him as President, from the Federal Home Loan Bank Board, which *in part* criticized the action of Beverly Hills Federal in selling to Lytton Savings certain loans and purchasing others from Lytton Savings in an approximate amount of 15 million dollars for each transaction, and although these loans were considered proper and advantageous to the Association by these Directors, a reversal of the transaction was ordered, but the contents of the remainder of this letter were neither discussed, considered nor expressly acted upon by these Directors

nor was the seriousness of the other parts of this letter noted in the minutes of the meeting of the Directors of the Association nor was the said letter made a part of the minutes of the meeting of the Directors of the Association, and

WHEREAS, less than four months after the assumption of purported directorship by Thomas W. Clarke, previously cast solely in the role of an Attorney rather than an administrator for the Lytton interests, by Beth Lytton, wife of Bart Lytton, Chairman of the Board of Lytton Financial Corporation and Dr. Samuel J. Sills, a former Director of Lytton Savings and Loan Association, Thomas W. Clarke returned to his professional role and approximately one month later, Beth Lytton was replaced by her spouse, Bart Lytton, completing the management take-over by Bart Lytton, President and Chairman of the Board of Lytton Financial Corporation, of Beverly Hills Federal Savings and Loan Association, although he had stated earlier that he would take no position or directorship with Beverly Hills Federal Savings and Loan Association, other than holding the first proxy position, because he "would not take advantage of a corporate opportunity that would be adverse to the Lytton Financial Corporation," and

WHEREAS, at the Meeting of Shareholders, held on Wednesday, January 17, 1962 at 8:30 o'clock a.m. at the offices of the Association at 9424 Wilshire Boulevard, Beverly Hills, California, the President of Beverly Hills Federal, Harold P. Braman, prior to the election of directors, read the "President's Report" to the shareholders, which, while detailing the "fine Year" had by the Association and the current and projected

growth of the Association, as well as the status of "one of the top leaders of the saving and loan business nationally" who, with his wife, had assumed "operating control" of the Association, failed to mention and discuss the Board's letter of June 15, 1961, advising the Association of certain violations of law and regulations and serious questions which were outlined in detail with respect thereto, and

WHEREAS, at the aforesaid Meeting of Shareholders, Bart Lytton voted 471,458 votes for each of the nominees for the offices of Directors of the Association, said votes resulting from 18,146 proxies held by Bart Lytton under power of substitution from Eugene Webb, Jr.

WHEREAS, as a result of the foregoing, Beverly Hills Federal Savings and Loan Association and its past and purported present Officers and Directors and Lytton Financial Corporation and its Officers and Directors have violated the rules and regulations of this Board, specifically § 544.5 of the Regulations and Section 4 of the By-Laws of Beverly Hills Federal Savings and Loan Association, and other law respectively as follows:

(a) Eugene Webb, Jr. and Marguerite R. Webb have violated their fiduciary responsibilities to the shareholders of Beverly Hills Federal Savings and Loan Association by making a special and secret profit and consideration in return for their transfer of the proxies of the shareholders to Bart Lytton, Beth Lytton, Samuel J. Sills and Thomas W. Clarke, in which action the other current members of the then Board of Directors joined;

(b) Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones have violated their fiduciary responsibilities of loyalty and good faith to the shareholders of Beverly Hills Federal Savings and Loan Association by participating in the furtherance and accomplishment of an agreement by certain directors to elect and maintain designated persons in office as Officers and Directors of said Association, which was against public policy and accordingly void, and all said participating directors acted with the knowledge of said unlawful agreement;

(c) The Board of Directors of Beverly Hills Federal Savings and Loan Association, which attempted to elect new Directors on March 14, 1961, acted illegally and in violation of the Regulations of the Federal Home Loan Bank Board in that there was not a quorum present to fill vacancies on the Board of Directors, since Richards Matthews, Jr. was not present at this reconvened meeting and since Eugene Webb, Jr. and Marguerite R. Webb could not participate, by law, since they were interested parties;

(d) The proxy holders of Beverly Hills Federal, who were originally Eugene Webb, Jr., Marguerite R. Webb, Robert G. Rufi, Eugene Webb, III and Richards Matthews, Jr., violated the law when they respectively transferred their proxies for a consideration;

(e) Bart Lytton, Beth Lytton, Thomas W. Clarke and the Board of Directors of Lytton Financial Corporation are equally at fault for the violation of law and the regulations of this Board in the reconstitution of the Board of Directors of Beverly Hills Federal Savings and Loan Association, the purchasing of directorships and the sale of proxies, with the Webbs and the

former Board of Directors of Beverly Hills Federal Savings and Loan Association, since they participated in and encouraged these respective transactions;

(f) The current Board of Directors of Beverly Hills Federal Savings and Loan Association have not been properly elected for the reasons hereinbefore described.

RESOLVED That pursuant to and under authority of Section 5(d)(1) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C.A. § 1464(d)(1), notice is hereby given to Beverly Hills Federal Savings and Loan Association, its Directors as of March 13, 1961, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones, and its Directors since March 14, 1961, Thomas W. Clarke, Beth Lytton, Dr. Samuel J. Sills, Bart Lytton, H. P. Braman and Glenn Wilson, and to Lytton Financial Corporation of the foregoing violations of law and the regulations of the Federal Home Loan Bank Board.

RESOLVED FURTHER That the Beverly Hills Federal Savings and Loan Association, its Directors as of March 13, 1961, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones, and its Directors since March 14, 1961, Thomas W. Clarke, Beth Lytton, Dr. Samuel J. Sills, Bart Lytton, H. P. Braman and Glenn Wilson, and Lytton Financial Corporation, its Officers and Directors, are hereby given thirty (30) days from the date of receipt of this Resolution within which to correct these violations of the law and the regulations of the Federal Home Loan Bank Board and to perform the legal duties concomitant with the correction of such violations of law and the regulations of this Board.

RESOLVED FURTHER That an authenticated copy of this resolution be personally served forthwith on Beverly Hills Federal Savings and Loan Association, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi, Eugene C. Jones, Thomas W. Clarke, Beth Lytton, Dr. Samuel J. Sills, Bart Lytton, H. P. Braman, Glenn Wilson and Lytton Financial Corporation or in lieu thereof that an authenticated copy be sent forthwith by registered mail to said parties at their last known addresses as they appear on the records of the Board.

I, Harry W. Caulsen do hereby certify that I am Secretary to the Federal Home Loan Bank Board, and do further certify that the foregoing is a true and correct copy of a resolution adopted by the Federal Home Bank Board at a meeting of said Board held at Washington, D. C. on the 26th day of January, 1962.

Witness my hand and the seal of said Board this 26th day of January, 1962.

Harry W. Caulsen
Secretary

APPENDIX "B."

FEDERAL HOME LOAN BANK BOARD

No. 15,450

Date: January 29, 1962

RESOLVED, That pursuant to Part 509 of the General Regulations of the Federal Home Loan Bank Board, Oran M. Gentry, Los Angeles, California, be and he hereby is, designated to make service of Federal Home Loan Bank Board Resolution No. 15,430, dated January 26, 1962 on Beverly Hills Federal Savings and Loan Association, Beverly Hills, California, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi, Eugene C. Jones, Thomas W. Clarke, Beth Lytton, Dr. Samuel J. Sills, Bart Lytton, H.P. Braman, Glenn Wilson and Lytton Financial Corporation, Hollywood, California.

By the Federal Home Loan Bank Board
Harry W. Caulsen
Secretary